

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5311 OF 2004

Mr.Paresh Rajda	.. Applicant
Versus	
State of Maharashtra & Anr.	.. Respondents

WITH

CRIMINAL APPLICATION NO.5310 OF 2004

Vijay Shroff	.. Applicant
Versus	
State of Maharashtra	.. Respondent

Mr.Pratap Sampat with Mr.Vinod Singh for
applicants
Mr.Sanjog Parab for respondent No.2
Mr.S.S.Tatkare, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 20th December 2005.

P.C.

. Heard Mr.Sampat appearing for applicants
and Mr.Parab appearing for respondent No.2.
Contention raised before me is that as far as

applicant in Application No.5310 of 2004 is concerned, he is arrayed as an accused only because he is Director of the Company (accused No.1). My attention is invited to the averments in para 2 of the complaint. The contention is that by merely stating that present applicant is Director does not meet the requirement prescribed in Section 138 read with section 141 of the Negotiable Instruments Act, 1881. Reliance is placed upon a decision of the Supreme Court in the case of S.M.S.Pharma Vs. Neeta Bhalla, reported in (2005) 8 S.C.C. 89.

2. On the other hand, Mr.Parab, appearing for second respondent - original complainant invites my attention to averments made in para 8 of the complaint and contends that the law is well settled. In exercise of inherent jurisdiction the complaint will have to be read as a whole and read thus, applicant's contention cannot be considered. In the instant case if the

complaint is read as a whole and in the backdrop of the legal provisions then this Court cannot interfere at this stage. In para 8 a specific case is made out, namely, not only the Chairman but Joint Managing Director and other Directors are responsible officers of accused No.1 and, therefore, they are liable to repay the amounts of dishonoured cheques. He then invites my attention to the averments in the present application wherein applicant has not only set up a case that complaint does not disclose any offence but surprisingly points out that he has dis-associated himself with the company in 2002 and prior thereto he was not responsible for day to day affairs and conduct of the business but he used to attend Company's Board Meetings in Advisory capacity. He was taken on the Board of Directors because he provided financial security.

3. In my view, considering the averments in the complaint and the legal provisions, this is

not a case in which it can be said that the complaint lacks the averments necessary for the purpose of proceeding against a person who is a Director of the Company. Together with company he has been charged with the offence in question on the basis that he was responsible and as a Director along with others, in charge of the business of company. Elaborate pleas as raised in the present applications need not be set out in a complaint under section 138. Ultimately, if the role that is played by applicant herein in the affairs of company is not such as would make him solely responsible or in charge of its business, he will not be convicted of offences under section 138 and 141 of Negotiable Instruments Act. However, for the present considering materials produced, this is not a fit case for interference in exercise of inherent jurisdiction. Applications dismissed. However, dismissal of these applications as well as the order of learned Magistrate shall not prevent the

applicants from raising appropriate contentions and for the Magistrate to take due notice of the same and pass appropriate orders in accordance with law.

4. As far as Application No.5311 of 2004 is concerned, it is by the Chairman. It is not seriously urged that he is not in charge or responsible for the business of the company. Hence, the same order.

(S.C.DHARMADHIKARI, J)